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# Legal Phases of Farmer Cooperatives //

## Sample Legal Documents //

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Farmer Cooperative Service,  
U.S. Department of Agriculture

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**FARMER COOPERATIVE SERVICE**  
**U.S. DEPARTMENT OF AGRICULTURE**

Farmer Cooperative Service provides research, management, and educational assistance to cooperatives to strengthen the economic position of farmers and other rural residents. It works directly with cooperative leaders and Federal and State agencies to improve organization, leadership, and operation of cooperatives and to give guidance to further development.

The Service (1) helps farmers and other rural residents obtain supplies and services at lower cost and to get better prices for products they sell; (2) advises rural residents on developing existing resources through cooperative action to enhance rural living; (3) helps cooperatives improve services and operating efficiency; (4) informs members, directors, employees, and the public on how cooperatives work and benefit their members and their communities; and (5) encourages international cooperative programs.

The Service publishes research and educational materials and issues *News for Farmer Cooperatives*. All programs and activities are conducted on a nondiscriminatory basis, without regard to race, creed, color, sex, or national origin."

## Preface

The Department of Agriculture first published a bulletin on cooperatives and the law in October 1922. It was revised extensively in October 1929, in May 1942, and in January 1958. The Department is publishing this complete revision of *Legal Phases of Farmer Cooperatives* (Bulletin 10) in parts. This part, *Sample Legal Documents*, is the first to be completed. The second part will cover monopoly and restraint of trade and the third Federal income taxes.

These three parts, along with up-to-date treatment of other legal aspects of the organization and operation of cooperatives, will be put together later as a wholly new *Legal Phases of Farmer Cooperatives*.

This part, *Sample Legal Documents*, also revises FCS Educational Circular 19 and is a companion publication to FCS Educational Circular 18, *How to Start a Cooperative*.

It was prepared by D. Morrison Neely, Office of the General Counsel, with the assistance of J. Warren Mather, Irwin W. Rust, George C. Tucker, and David Volkin, Farmer Cooperative Service.

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# **Legal Phases of Farmer Cooperatives:**

## **SAMPLE LEGAL DOCUMENTS //**

Presented here are sample legal documents useful in organizing a cooperative to operate on a service-at-cost basis for the mutual benefit of its members.

The forms may be used by cooperatives with or without capital stock. Appropriate changes are identified by bracketed material for cooperatives operating with capital stock as well as for other situations where alternate methods of organization and operation are desired.

If the plan of operation of the cooperative contemplates the same or different treatment for nonmembers in patronage distributions, revisions or additional provisions will be necessary.

The sample forms are general in character. They should be checked by an attorney and modified to conform with applicable State laws, and to apply to the specific needs of the association and its members.

The articles of incorporation and bylaws supplement each other. Both should be distributed to members.

The Capper-Volstead Act is reproduced for informational purposes because it is the basic Federal statute guaranteeing farmers the right to organize in associations to market their products on a cooperative basis.

## **Organization Agreement**

The undersigned, a producer of agricultural products, herein-after referred to as "Producer", together with other signers of

agreements similar hereto, for the purpose of engaging in \_\_\_\_\_

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*(In the above space broadly state purposes for which association is to be organized)*  
propose to organize a cooperative association without<sup>1</sup> capital stock under the laws of the State of \_\_\_\_\_, as hereinafter provided, and in consideration of the premises, hereby agrees for himself and for the express benefit of and for the association to be organized, as follows:

1. (a) The association shall be organized with suitable articles of incorporation and bylaws as determined by an organization committee consisting of the following persons:

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*(State names and addresses of committee members)*

(b) This committee may, in the discretion of a majority thereof, increase its membership, fill any vacancy therein, and appoint any committees deemed necessary to conduct the details of its affairs. The committee, or any committee designated by it, may prescribe an organization fee to be paid by each person signing an organization agreement similar hereto and may incur necessary obligations, make necessary expenditures, and take any such action as may, in its discretion, be deemed advisable to further the organization of the association.

2. The bylaws of the association shall provide, among other things, that \_\_\_\_\_

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*(Here enumerate the chief provisions which it is proposed shall be contained in the bylaws)*

3. If, on or before \_\_\_\_\_, 19 \_\_\_\_\_, the organization committee is of the opinion that sufficient sign-up has been obtained to enable the association to operate efficiently, the committee shall, by notice to be published in one or more newspapers of general circulation in the area in which those who sign agreements like this one reside, specify a date and place for a meeting of those who sign such agreements to enable those attending such meeting conclusively to determine, by majority vote, if

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<sup>1</sup>If association is to be formed with capital stock, "without" should be changed to "with".

a sufficient sign-up has been obtained to justify the formation and operation of the association, and to consider such other business as may be deemed expedient. Notice of the action there taken shall be published in one or more newspapers of general circulation in the area.

4. The organization committee shall keep full, true, and detailed accounts of all receipts and of all expenditures of every kind. It shall have such accounts audited and render a written report thereof to the board of directors of the association when organized. And it shall thereupon turn over to the association any balance remaining in its hands free of obligation. If the association is not so organized, such unexpended balance shall be prorated among those who contributed thereto.

5. Producer hereby subscribes for \$\_\_\_\_\_ of member capital and agrees to pay therefore as follows: \_\_\_\_\_

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If association is to be formed with capital stock, the following may be substituted for paragraph 5:

Producer agrees to purchase and does hereby subscribe for one share of voting common stock of the association, par value \$\_\_\_\_\_, payable on demand following the acceptance hereof, and \_\_\_\_\_ shares of nonvoting preferred stock of the association, par value \$\_\_\_\_\_ each, and agrees to pay for same as follows:

\$\_\_\_\_\_ cash on demand following the incorporation of the association

\$\_\_\_\_\_ on or before \_\_\_\_\_, 19 \_\_\_\_\_

\$\_\_\_\_\_ on or before \_\_\_\_\_, 19 \_\_\_\_\_

It is understood that certificates for such preferred stock shall not be issued and that no dividends shall be paid thereon until such shares have been paid in full. Producer hereby authorizes and directs the association to apply any and all dividends or distributions accruing to him during any year to the payment

of any or all installments due or which may be due on such stock subscriptions for that year or for any prior year.

6. Producer applies for membership in the association when organized and expressly agrees that signature to a marketing contract shall be deemed to all intents and purposes the same as signature to this organization agreement, all of which shall be irrevocable, except as provided in section 3 of this organization agreement and the marketing contract or the bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as for their own general benefit.

If an association is formed without capital stock and is not to use a marketing contract, the following may be substituted for paragraph 6:

Producer applies for membership in the association when organized and expressly agrees that signature hereto shall be irrevocable, except as provided in section 3 hereof or in the bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as for their own general benefit.

If association is to be formed with capital stock and is to use a marketing contract, the following may be substituted for paragraph 6:

Producer hereby agrees that his signature to the marketing contract shall be deemed to all intents and purposes the same as his signature to this organization agreement, all of which shall be irrevocable except as provided in section 3 of this organization agreement and the marketing contract or the bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as their own general benefit.

If an association is to be formed with capital stock and is not to use a marketing contract, the following paragraph may be substituted for paragraph 6:

Producer hereby agrees that his signature hereto shall be irrevocable, except as provided in section 3 hereof or in the bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as their own general benefit.

7. Acceptance hereof shall be deemed conclusive upon the mailing, by the association, of a notice to that effect to Producer at his address noted below, and such mailing and notice shall be conclusively established by the affidavit of the secretary of the association.

Date \_\_\_\_\_

Producer's signature \_\_\_\_\_ ( \_\_\_\_\_ )  
(Print name here)

Address \_\_\_\_\_  
(R.F.D. or Street No.) (Town) (State and Zip Code)

Social Security No. \_\_\_\_\_ County \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Inc.

By \_\_\_\_\_, Pres.

By \_\_\_\_\_, Secy.

## **Membership Applications and Marketing Contracts**

Any of the following three forms, "Membership Application and Marketing Contract", may be used by marketing coopera-

tives. Persons forming a new cooperative should select, and modify if necessary, the one most applicable to the operations of the new organization.

## CONTRACT SAMPLE A

Contract No. \_\_\_\_\_

### Membership Application and Marketing Contract

I hereby apply for membership in, and agree to deliver to \_\_\_\_\_, to be marketed by the association as my agent, in its usual and customary manner, all the \_\_\_\_\_ produced on the following acreage: \_\_\_\_\_

during the \_\_\_\_\_ season and year to year thereafter, unless terminated in writing by either party during the first fifteen days of \_\_\_\_\_ (month). The association agrees to market said \_\_\_\_\_.

The bylaws of the association and its rules and regulations are hereby referred to and made a part hereof, and I agree to abide by them upon acceptance of this application.

Date \_\_\_\_\_

Producer's signature \_\_\_\_\_ (\_\_\_\_\_) (Print name here)

Address \_\_\_\_\_  
(R.F.D. or Street No.) (Town) (State and Zip Code)

Social Security No. \_\_\_\_\_ County \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Inc.

\_\_\_\_\_, Pres.

\_\_\_\_\_, Secy.



*(Some State laws provide for filing or recording cooperative marketing contracts in a county recorder's office to give notice to third parties that the contract exists. Add acknowledgment if the contract is to be filed or recorded.)*

## CONTRACT SAMPLE B

Contract No. \_\_\_\_\_

### Membership Application and Marketing Contract

I hereby apply for membership in, and agree to deliver to \_\_\_\_\_, to be marketed in the following manner \_\_\_\_\_

all the \_\_\_\_\_ produced on the following acreage: \_\_\_\_\_

at least during the \_\_\_\_\_ season and year to year thereafter, unless terminated in writing by either party within the first fifteen days of \_\_\_\_\_ (month). The association agrees to market said \_\_\_\_\_ in the manner described herein.

The bylaws of the association and its rules and regulations are hereby referred to and made a part hereof, and I agree to abide by them upon acceptance of this application.

Inasmuch as this contract is one of a series, its value being dependent upon full performance by each of the contracting producers, and inasmuch as it will always be difficult and impracticable to determine the actual damage resulting to the association from the violation by the producer of the terms of this contract through failure to market through the association all of the \_\_\_\_\_ herein agreed to be marketed, I hereby agree to pay to the association \_\_\_\_\_ cents per cwt. for all \_\_\_\_\_ marketed in violation of this contract.

The association may enter into contracts with other producers that differ in terms from this contract, but consistent with the bylaws of the association, without invalidating this contract; provided that I, at my request, may execute a similar contract as a substitute for this contract. Withdrawal shall not affect my obligation to deliver the \_\_\_\_\_ produced during the \_\_\_\_\_ season.

Date \_\_\_\_\_

Producer's signature \_\_\_\_\_ (\_\_\_\_\_) (Print name here)

Address \_\_\_\_\_  
(R.F.D. or Street No.) (Town) (State and Zip Code)

Social Security No. \_\_\_\_\_ County \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_, Inc.

By \_\_\_\_\_, Pres.

By \_\_\_\_\_, Secy.

*(Some State laws provide for filing or recording cooperative marketing contracts in a county recorder's office to give notice to third parties that the contract exists. Add acknowledgment if the contract is to be filed or recorded.)*

## CONTRACT SAMPLE C

Contract No. \_\_\_\_\_

### Membership Application and Marketing Contract

THIS AGREEMENT between the \_\_\_\_\_, Inc.,



hereinafter referred to as the Association, and the undersigned Producer, witnesseth:

The Producer:

1. Applies for membership in the Association, and if accepted as a member, agrees to be bound by its articles of incorporation, bylaws, rules and regulations as now or hereafter adopted.

2. Appoints the Association his agent to sell all the \_\_\_\_\_ of marketable quality produced on any farm in control of or operated by the Producer, except that required for consumption on the farm.

3. Will deliver such products at such times and to such places in unadulterated form under such conditions as may be prescribed by proper authorities.

4. Will notify the Association of any lien on the products delivered hereunder, and authorizes the Association to pay the holder of said lien from the net proceeds derived from the sale of such products before any payment is made to the Producer hereunder.

5. Will provide capital in such amounts and in such a manner as may be provided in the bylaws.

The Association:

1. Accepts the application of Producer for membership in the Association.

2. Agrees to act as agent for the marketing of products of Producer as herein provided.

3. Will dispose of Producer's products in a manner deemed to be most advantageous for its members.

4. Will account to the Producer in accordance with this contract for all amounts received from the sale of products as herein provided.

5. Will reflect and credit in an appropriate capital account the capital received from each patron.

The Producer and the Association mutually agree that the Association shall have the power:

1. To establish various plans for making returns to the Producer.

2. To blend or pool proceeds from sales of products of the Producer with the proceeds of the sales of products of other Producers, and to account or settle with Producer therefor in accordance with established plans.

3. To process or cause to be processed products of the Producer and dispose of the same in the manner deemed most advantageous to its members.

4. To collect from buyers of products the purchase price therefor and to remit the same to Producer under a plan authorized by this contract after making uniform deductions deemed adequate for all necessary expenses and for capital purposes.

In case of a breach of this contract by the Producer, the actual damage to the Association and other producers cannot be determined. Therefore, Producer agrees to pay to the Association as liquidated damages for such breach, the sum of \_\_\_\_\_ dollars (\_\_\_\_\_) per \_\_\_\_\_ on all products which would have been delivered had the Producer not breached the said contract.

And the Association shall further be entitled to equitable relief by injunction or otherwise to prevent any such breach or threatened breach thereof and the payment of all costs of litigation in connection with the exercise of any or all of the remedies available to the Association.

This contract shall remain in effect for an initial term of \_\_\_\_\_ years from the date hereof. Following the initial term, the contract may be cancelled by notice given in writing by either party to the other within ten (10) days after any yearly anniversary date and such cancellation shall become effective on the last day of the second calendar month following the month during which such notice is given.

Date \_\_\_\_\_

Producer's signature \_\_\_\_\_ (\_\_\_\_\_) (Print name here)

Address \_\_\_\_\_

(R.F.D. or Street No.)

(Town)

(State and Zip Code)

Social Security No. \_\_\_\_\_ County \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Inc.

By \_\_\_\_\_, Pres.

By \_\_\_\_\_, Secy.

*(Some State laws provide for filing or recording cooperative marketing contracts in a county recorder's office to give notice to third parties that the contract exists. Add acknowledgment if the contract is to be filed or recorded.)*

## Articles of Incorporation<sup>2</sup>

of \_\_\_\_\_<sup>3</sup> Association

We, the undersigned, all of whom are residents and citizens of the State of \_\_\_\_\_, engaged in the production of agricultural products, do hereby voluntarily associate ourselves together for the purpose of forming a cooperative association, without<sup>4</sup> capital stock, under the provisions of the \_\_\_\_\_ Cooperative Marketing Act of the State of \_\_\_\_\_.

### ARTICLE I—NAME

The name of the association shall be \_\_\_\_\_ Association.

<sup>2</sup>The articles of incorporation should be checked against the State law and should meet its requirements and be consistent therewith.

<sup>3</sup>Wherever required, the word "cooperative" should appear in the name of the association.

<sup>4</sup>If the association is to be formed with capital stock, this word should be "with".

## ARTICLE II—PURPOSES

The Association is formed for the following purposes:<sup>5</sup>

To provide or procure for its members any and all goods or services related to producing and marketing agricultural products or any products derived therefrom; and to perform or make available any other services needed to operate the farm business, such as credit, irrigation, or pest control; and to exercise all such powers in any capacity on a cooperative basis.

## ARTICLE III—POWERS; LIMITATIONS<sup>6</sup>

Section 1. *Powers.* This association shall have the following powers:

(a) To borrow money without limitation<sup>7</sup> as to amount of corporate indebtedness or liability; to give a lien on any of its property as security therefor in any manner permitted by law; and to make advance payments and advances to members and other producers.

(b) To act as the agent or representative of any patron or patrons in any of the activities mentioned in Article II hereof.

(c) To buy, lease, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conduct and operation of the business of the association, or incidental thereto.

(d) To draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants, certificates, and all kinds of obligations and negotiable or transferable instruments for any purpose that is deemed to further

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<sup>5</sup>*This article may be modified in a manner consistent with the State statute to state the specific purposes for which a particular association is formed. Modification will be necessary if the cooperative wishes to serve nonmembers as well as members.*

<sup>6</sup>*In this, as in other organization matters, the statute under which an association is being incorporated should be considered.*

<sup>7</sup>*In some States, the law requires that the maximum indebtedness which may be incurred by a corporation be stated in its articles of incorporation.*

the objects for which this association is formed and to give a lien on any of its property as security therefor.

(e) To acquire, own, and develop any interest in patents, trademarks, and copyrights connected with or incidental to the business of the association.

(f) To cooperate with other similar associations in creating central, regional, or national cooperative agencies, for any of the purposes for which this association is formed, and to become a member or stockholder of such agencies as now are or hereafter may be in existence.

(g) To have and exercise, in addition to the foregoing, all powers, privileges, and rights conferred on ordinary corporations and cooperative marketing associations by the laws of this State and all powers and rights incidental or conducive to carrying out the purposes for which this association is formed, except such as are inconsistent with the express provisions of the act under which this association is incorporated, and to do any such thing anywhere; and the enumeration of the foregoing powers shall not be held to limit or restrict in any manner the general powers which may by law be possessed by this association all of which are hereby expressly claimed.

Section 2. *Limitations.*<sup>8</sup> This association shall not market the products of nonmembers in an amount the value of which exceeds the value of the products marketed for members. It shall not purchase supplies and equipment for nonmembers in an amount the value of which exceeds the value of the supplies and equipment purchased for members. It shall not purchase supplies and equipment for persons who are neither members nor producers of agricultural products in an amount the value of which exceeds fifteen percent (15%) of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the limitations imposed by this section.

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<sup>8</sup>*If the association desires to transact business with members only, this section will require revision. If the association does not desire to qualify under Section 521 of the Internal Revenue Code of 1954, this section can be partially or wholly omitted, depending upon the requirements of the State statute.*



## ARTICLE IV—PLACE OF BUSINESS

The association shall have its principal place of business in the city of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.<sup>9</sup>

## ARTICLE V—PERIOD OF DURATION<sup>10</sup>

The term for which this association shall exist is \_\_\_\_\_ years from and after the date of its incorporation.

## ARTICLE VI—DIRECTORS

The number of directors of this association shall be \_\_\_\_\_.<sup>11</sup> Of the first elected board of directors, \_\_\_\_\_ shall be elected for 1 year; \_\_\_\_\_ for 2 years; and \_\_\_\_\_ for 3 years; and thereafter all directors shall be elected for 3 years. The names and addresses of those who are to serve as incorporating directors until the first annual meeting of the members or until their successors are elected and qualified are:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

<sup>9</sup>Some State laws require the inclusion of the name of a resident agent upon whom process may be served.

<sup>10</sup>If the law under which the association is organized permits perpetual existence this article may read, "This association shall have perpetual existence."

<sup>11</sup>If the statute under which an association is to be incorporated will permit, it is preferable to state in the articles of incorporation only the minimum number of directors that the association will have, providing in the bylaws, which may be more easily amended, for the actual number. The provision for staggered terms may not be permitted by the laws of some States. If not, this article should provide that all directors shall be elected each year.

## ARTICLE VII—MEMBERSHIP

This association shall not have capital stock, but shall admit applicants to membership in the association upon such uniform conditions as may be prescribed in its bylaws. This association shall be operated on a cooperative basis for the mutual benefit of its members as producers. Membership in the association shall be restricted to producers and associations of producers, who shall patronize the association.

The voting rights of the members of the association shall be equal and no member shall have more than one vote upon each matter submitted to a vote at a meeting of the members.<sup>12</sup>

The property rights and interests of each member in the association shall be unequal; and shall be determined and fixed in the proportion that the patronage of each member shall bear to the total patronage of all the members with the association. But, in determining property rights and interests, all amounts allocated to each patron or evidenced by certificates of any kind shall be excluded, and, upon dissolution, the equity interests of members and patrons shall be determined as provided in the bylaws. New members admitted to membership shall be entitled to share in the property of the association in accordance with the foregoing general rule.

If the association is formed with capital stock, this Article might read as follows:

## ARTICLE VII—CAPITAL STOCK

SECTION 1. *Authorized Amounts; Classes.* The capital stock of the association shall consist of \_\_\_\_\_ shares, divided into \_\_\_\_\_ shares of common stock of the par value of \$\_\_\_\_\_ per share,

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<sup>12</sup>If voting on any other basis is permitted by the State law and the incorporators desire to provide for another basis, this sentence should be revised accordingly.

and \_\_\_\_\_ shares of preferred stock of the par value of \$\_\_\_\_\_ per share.

SECTION 2. *Common Stock.* The common stock of this association may be purchased, owned, or held only by producers (1) who patronize the association in accordance with uniform terms and conditions prescribed by it, and (2) who have been approved by the board of directors. "Producer" shall mean and include persons (natural or corporate) engaged in the production of \_\_\_\_\_, or other agricultural products, including tenants of land used for the production of any such product, and lessors of such land who receive as rent therefor part of any such product of such land, and cooperative associations (corporate or otherwise) of such producers.

Each member shall hold only one share of common stock and each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders upon each matter submitted to a vote at a meeting of the stockholders.<sup>13</sup> In the event the board of directors of the association shall find, following a hearing, that any of the common stock of this association has come into the hands of any person who is not eligible for membership, or that the holder thereof has ceased to be an eligible member, or that such holder has not, for a period of two (2) years, marketed through the association the products covered by a marketing contract or contracts with it, or has not otherwise patronized the association, such holder shall have no rights or privileges on account of such stock, or vote or voice in the management or affairs of the association other than the right to participate in accordance with law in case of dissolution. The association shall have the right, at its option, (a) to purchase such stock at its book

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<sup>13</sup>If voting on any other basis is permitted by the State law and the incorporators desire to provide for another basis, this sentence should be revised accordingly.



or par value, whichever is less, as determined by the board of directors of the association; (b) to require the transfer of any such stock at such book or par value, to any person eligible to hold it; or (c) to require such holder of any such stock to convert it into shares of preferred stock of equal value.

In exercising its right to purchase or to require the transfer or conversion of common stock into preferred stock if such holder fails to deliver the certificate evidencing the stock, the association may cancel such certificate on its books and issue a new certificate of common or preferred stock, as the case may be, to the party entitled thereto.

The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association, and then only to persons eligible to hold it. No purported assignment or transfer of common stock shall pass to any person not eligible to hold it, the rights or privileges on account of such stock, or a vote or voice in the management of the affairs of the association. This association shall have a lien on all of its issued common stock for all indebtedness of the holders thereof to the association. No dividends shall be paid on the common stock.<sup>14</sup>

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<sup>14</sup>If desired, provision may be made for dividends on common stock. A number of cooperatives, however, are choosing to eliminate such dividends because their members prefer to receive all returns on a patronage basis. Also, a cooperative that does not qualify under Section 521 of the Internal Revenue Code of 1954, has been taxable on net margins equal to the maximum permissible dividends payable on stock, if the board had discretion to determine the dividend rate. United Cooperatives, Inc., 4 T.C. 93 (1944). But a 1969 Revenue Ruling applies a somewhat different rule under Subchapter T of the Code. Dividends on stock actually paid by a cooperative were less than the maximum amount permitted under the bylaws. The bylaws also required the net amount remaining after payment of dividends on stock to be distributed on a patronage basis to all patrons. The cooperative was allowed to deduct as a patronage refund under Section 1382 of the Code the net amount remaining after payment of dividends on stock. The ruling does not indicate whether the cooperative qualified under Section 521. Rev. Rul. 69-621, I.R.B. 1969-50, p. 14.

SECTION 3. *Preferred Stock.* The preferred stock of this association may be issued to any person, association, co-partnership, corporation or other organization, in series. It shall carry no voting rights.<sup>15</sup> Noncumulative dividends of not to exceed six percent (6%) per annum may be paid on preferred stock, when, if, and as declared by the board of directors.

Preferred stock may be transferred only on the books of the association; and may be redeemed in whole or part on a pro rata basis at par plus any dividends declared thereon and unpaid, at any time on thirty (30) days' notice by the association, provided said stock is redeemed in the same order as originally issued by years. On the failure to deliver the certificate or certificates evidencing any such stock, the association may cancel the stock on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividend declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption.

This association shall have a lien on all of its issued preferred stock for all indebtedness of the holders thereof to the association.<sup>16</sup>

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<sup>15</sup>*In some States all classes of stock are entitled to vote. If necessary, this provision should be revised accordingly; but in such cases care should be taken to restrict the right to hold preferred stock to producers who patronize the association.*

<sup>16</sup>*Whether a lien should be provided on preferred stock may depend on the intended use of such stock in the operations of the association. Some cooperatives use such stock primarily as a means of raising capital by sale to investors who may or may not be patrons. If this is the intent, it may be undesirable to provide a lien since this may tend to restrict the salability and circulation of the stock in a free market. On the other hand, if the stock is issued primarily to patrons in payment of patronage refunds, it may be deemed advisable to provide for a lien to aid the association in collecting indebtedness from patrons.*

At the discretion of the board of directors, all dividends or distributions of the association or any part thereof may be paid in certificates of preferred stock or credits on preferred stock or ad interim certificates representing fractional parts thereof, subject to conversion into full shares.

Notwithstanding any of the foregoing provisions, the board of directors shall have the power, from time to time and at any time, to pay off or retire or secure a release or satisfaction of any preferred stock certificates to compromise or settle a dispute between a holder thereof and the association, to settle an estate of a deceased or bankrupt stockholder, or to close out a stockholder's interest when he has moved from the territory.

Upon dissolution or distribution of the assets of the association, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividend declared thereon and unpaid before any distribution is made on the common stock.

In testimony whereof, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
State of \_\_\_\_\_<sup>17</sup>

County of \_\_\_\_\_SS.

Before me, a notary public, within and for said county and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared \_\_\_\_\_ known to me to be one of the identical persons who executed the within and foregoing instrument, and he acknowledged to me that he had executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

<sup>17</sup>The required number of incorporators should acknowledge, and the acknowledgment form should conform to the requirements of the State of incorporation.

Witness my hand and official seal the day and year above set forth.

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Notary Public

In and for the County of \_\_\_\_\_, State of \_\_\_\_\_  
\_\_\_\_\_ My Commission expires \_\_\_\_\_.

## Bylaws<sup>18</sup>

### ARTICLE I—MEMBERSHIP

SECTION 1. *Qualifications.* Any person, firm, partnership, corporation, or association, including both landlords and tenants in share tenancies, who is a producer of agricultural products and who pays such membership fee and meets such other uniform conditions as may be prescribed by the board of directors (hereinafter called the “board”), may become a member of the association. This association shall issue a certificate of membership to each member which shall be in such form as may be prescribed by the board but shall not be transferable.

SECTION 2. *Suspension or Termination.* If, following a hearing, the board shall find that a member has ceased to be an eligible member or has not, for a period of two (2) years, marketed through the association the products covered by a marketing contract or contracts with the association or has not otherwise patronized the association, it may suspend his rights as a member or terminate his membership. Upon termination of membership in the association, all rights and interests of such member in the association shall cease and such member shall be entitled only to payment or credit for the equitable appraised value of his property rights and interests in the association, as conclusively determined by the board.<sup>19</sup> In determining property rights and interests, all amounts allocated to each member or

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<sup>18</sup>The bylaws should be carefully checked for consistency with State laws and the articles of incorporation.

<sup>19</sup>The State law may prescribe the rights of a person whose membership is terminated, in which case this provision should be made consistent.

evidenced by certificates of any kind shall be excluded, and any such amounts shall be accounted for to members in accordance with the terms and conditions applicable thereto. No action taken hereunder shall impair the obligations or liabilities of either party under any contract with the association, which may be terminated only as provided therein.

If the association is formed with capital stock, this Article might read as follows:

### **ARTICLE I—MEMBERSHIP**

Each member of this association shall be the holder of one fully paid share of its common stock. The requirements for ownership of common stock are set forth in the articles of incorporation. Any corporate member may be represented by any individual duly authorized in writing filed with the association.

### **ARTICLE II—MEETINGS OF MEMBERS**

SECTION 1. *Annual Meeting.*<sup>20</sup> The annual meeting of the members of this association shall be held in the town of \_\_\_\_\_, State of \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m., on the \_\_\_\_\_ day of \_\_\_\_\_ of each year, or on any date which the board shall designate at least 30 days in advance of the date specified above.

SECTION 2. *Special Meetings.* Special meetings of the members of the association may be called at any time by order of the board, and shall be called at any time upon written request of at least \_\_\_\_\_ percent ( %) of the members, provided, however, that in no case shall the required number

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<sup>20</sup>A delegate system of member representation might be used at the annual meeting. Delegates might be elected at district meetings by members.



of signatures to such a request be less than \_\_\_\_\_.( ).  
The request shall state the time, place, and object of the meeting.

SECTION 3. *Notice of Meetings.* Written or printed notice of every regular and special meeting of members shall be prepared and mailed to the last known post office address of each member not less than ten (10) days before such meetings. Such notice shall state the object or objects thereof and the time and place of meeting. No business shall be transacted at special meetings other than that referred to in the call.

SECTION 4. *Voting.* Each member shall be entitled to only one vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of a majority of the members voting thereon.<sup>21</sup> Voting by proxy or cumulative voting shall not be permitted. Absent members may vote on specific questions other than the removal of directors by ballots transmitted to the secretary by mail. Such ballots shall be counted only in the meeting at the time in which such vote is taken, provided that all members have been notified in writing, pursuant to action by the board, of the exact wording of the motion or resolution upon which such vote is taken, and a copy thereof is forwarded with and attached to the vote of the member voting.

SECTION 5. *Quorum.* As long as the total number of members does not exceed \_\_\_\_\_ hundred, ten (10) members or ten per centum of the total number of members present in person, whichever shall be the larger, shall constitute a quorum. In case the total number of members shall exceed five hundred, fifty members or five per centum of the members, present in person, whichever shall be the larger, shall constitute a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

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<sup>21</sup>If voting on any other basis is permitted by the State law and it is desired to provide for another basis, this sentence should be revised accordingly.

SECTION 6. *Order of Business.* The order of business at the annual meeting shall be:

1. Determination of quorum.
2. Proof of due notice of meeting.
3. Reading and disposition of minutes.
4. Annual reports of officers and committees.
5. Unfinished business.
6. New business.
7. Election of directors.
8. Adjournment.

### ARTICLE III—DIRECTORS AND OFFICERS

SECTION 1. *Number and Qualifications of Directors.* The association shall have a board of \_\_\_\_\_ (\_\_\_\_\_) members.<sup>22</sup> Each director shall be a member of this association.<sup>23</sup> No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association. If a majority of the board finds at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director.<sup>24</sup>

SECTION 2. *Election of Directors.* At the first annual meeting of the members of this association directors shall be elected to succeed the incorporating directors. \_\_\_\_\_ (\_\_\_\_\_) directors shall be elected for 1 year; \_\_\_\_\_ (\_\_\_\_\_) directors for 2 years; and \_\_\_\_\_ (\_\_\_\_\_) directors for 3 years. Thereafter each director shall be elected for 3 years.<sup>25</sup>

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<sup>22</sup>If an association wishes to encourage associations of producers to join as members, it may add, unless prohibited by statute, the following: “except the board may create one or more additional directorships to accommodate associations of producers desiring to become members of this association.”

<sup>23</sup>If permitted by statute, provision may be made authorizing representatives of incorporated members to be directors.

<sup>24</sup>Some cooperatives include a provision like the following: “No director after having served for \_\_\_\_\_ consecutive terms shall be eligible to succeed himself, but after a lapse of one year shall again be eligible.”

<sup>25</sup>Some State laws may not permit staggered terms. If so, this sentence should provide that all directors shall be elected each year.

At least two candidates shall be nominated for each directorship. All directors shall be elected by secret ballot and the nominee receiving the greatest number of votes shall be elected.

Many cooperatives find it desirable to use a nominating committee. The following language may be included as a separate section:

SECTION —. *Nominations.* The board shall appoint, not less than thirty days nor more than sixty days before the date of a meeting of the members at which board members are to be elected, a committee on nominations consisting of \_\_\_\_\_ members who shall be selected from different sections so as to insure equitable representation. No member of the board may serve on such committee. The committee shall prepare and post at the principal office of the association at least twenty days before the meeting a list of nominations for board members which shall include at least two candidates for each board position to be filled by the election. The secretary shall be responsible for mailing at least ten days before the date of the meeting a statement of the number of board members to be elected and the names and addresses of the candidates nominated by the committee on nominations. Any fifteen or more members acting together may make other nominations by petition and the secretary shall post such nominations at the same place where the list of nominations made by the committee is posted. Nominations made by petition must be received at least five days before the meeting and shall be included on the official ballot. Later nominations by petition shall be treated as nominations from the floor.

If the association wishes to select directors by districts, it is suggested that Article III, Section 2 might read as follows:

SECTION 2. *Election of Directors.* The incorporating directors shall serve until the first annual meeting



of the members or until their successors shall have been elected and qualified. The incorporating directors shall divide the territory served by the association into \_\_\_\_\_ districts on the basis of geographic areas in which the number of members or the volume of business done with the association is approximately the same.

Each year the board shall establish a redistricting committee comprised of one member other than a director from each district. The redistricting committee shall meet at least 120 days prior to the annual meeting and may redistrict the territory as may be deemed advisable. A map and description of the current districts shall be maintained in the principal office of the association.

The board shall determine the time and place within each district for meetings to nominate directors.<sup>26</sup> Such district meetings shall be held not less than 30 days nor more than 90 days before the annual meeting. Notice of district meetings, together with a statement of the purpose, shall be mailed to each member in the district at least ten (10) days before the meeting. Those members present shall constitute a quorum. The chairman selected by the members present shall certify to the secretary of the association within five days the selection of not more than two nominees.

Beginning with the year \_\_\_\_\_, \_\_\_\_\_  
(\_\_\_\_\_) directors shall be elected for 1 year;  
\_\_\_\_\_ (\_\_\_\_\_) directors for 2 years; and  
\_\_\_\_\_ (\_\_\_\_\_) directors for 3 years.  
Thereafter each director shall be elected for 3 years.<sup>27</sup>

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<sup>26</sup>Some associations, in lieu of holding district nominating meetings, may wish to provide for a nominating committee, appointed by the board, to prepare a list of nominees on a district basis, or that directors be elected at district meetings.

<sup>27</sup>Some State laws may not permit staggered terms. If so, this sentence should provide that all directors shall be elected each year.

The director for each district shall be elected at an annual membership meeting by secret ballot from the nominees selected at the district meetings and other nominations of members residing in the district that may be made from the floor. If necessary, additional ballots shall be taken for the two with the largest vote until one is elected by majority vote.<sup>28</sup>

SECTION 3. *Election of Officers.* The board shall meet within \_\_\_\_\_ (\_\_\_\_\_) days after the first election and within \_\_\_\_\_ (\_\_\_\_\_) days after each annual election and shall elect by ballot a president, vice president, secretary, and treasurer (or a secretary-treasurer), each of whom shall hold office until the election and qualification of his successor unless earlier removed by death, resignation, or for cause. The president and vice president only need be members of the board. Vacancies in such offices shall be filled by the board through election by ballot.

SECTION 4. *Vacancies.* Whenever a vacancy occurs in the board, other than from the expiration of a term of office, the remaining directors shall appoint a member to fill the vacancy until the next regular meeting of the members.

SECTION 5. *Board Meetings.* In addition to the meetings mentioned above, regular meetings of the board shall be held (monthly, quarterly, or semiannually) or at such other times and at such places as the board may determine.

SECTION 6. *Special Meetings.* A special meeting of the board shall be held whenever called by the president or by a majority of the directors. Any and all business may be transacted at a special meeting. Each call for a special meeting shall be in writing, signed by the person or persons making the same, addressed and delivered to the secretary, and shall state the time and place of such meeting. On the signing of a waiver of notice of a meeting, a meeting of the board may be held at any time.

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<sup>28</sup>Some associations may wish to provide for the election of directors at district meetings rather than at the annual meeting.

SECTION 7. *Notice of Board Meetings.* Oral or written notice of each meeting of the board shall be given each director by or under the supervision of the secretary not less than 48 hours prior to the time of the meeting, but such notice may be waived by all the directors, and appearance at a meeting shall constitute a waiver of notice thereof.

SECTION 8. *Compensation.* The compensation, if any, of the members of the board and of the executive committee shall be determined by the members of the association at any annual or special meeting of the association. No member of the board shall occupy any position in the association on regular salary.

SECTION 9. *Quorum.* A majority of the board shall constitute a quorum at any meeting of the board.

## ARTICLE IV—DUTIES OF DIRECTORS

SECTION 1. *General Powers.* The board shall direct the business and affairs of the association and shall exercise all of the powers of the association except such as are by law, the articles of incorporation or these bylaws conferred upon or reserved to the members. The board shall adopt such policies, rules and regulations not inconsistent with law, the articles of incorporation, or these bylaws, as it may deem advisable.

SECTION 2. *Employment of Manager.* The board shall have power to employ a manager, define his duties and fix his compensation.

SECTION 3. *Bonds and Insurance.* The board shall require the manager and all other officers, agents, and employees charged by the association with responsibility for the custody of any of its funds or property to give adequate bonds. Such bonds, unless cash security is given, shall be furnished by a responsible bonding company and approved by the board and the cost thereof shall be paid by the association. The board shall provide for the adequate insurance of the property of the association, or property which may be in the possession of the association, or stored by it, and not otherwise adequately insured,

and in addition adequate insurance covering liability for accidents to all employees and the public.

SECTION 4. *Accounting System and Audit.* The board shall have installed and maintained an adequate system of accounts and records. At least once in each year the board shall obtain the services of a competent and disinterested public auditor or accountant, who shall audit the books and accounts of the association and render a report in writing thereon, which report shall be submitted to the members of the association at their annual meeting. This report shall include at least a balance sheet, and an operating statement for the fiscal period under review.

## ARTICLE V—DUTIES OF OFFICERS AND MANAGER

SECTION 1. *Duties of President.* The president shall (1) preside over all meetings of the association and of the board, (2) call special meetings of the board, (3) perform all acts and duties usually performed by an executive and presiding officer, and (4) sign all membership<sup>29</sup> certificates and such other papers of the association as he may be authorized or directed to sign by the board; *provided, however*, that the board may authorize any person to sign any or all checks, contracts, and other instruments in writing on behalf of the association. The president shall perform such other duties as may be prescribed by the board.

SECTION 2. *Duties of the Vice President.* In the absence or disability of the president, the vice president shall perform the duties of the president.

SECTION 3. *Duties of Secretary.* The secretary shall keep a complete record of all meetings of the association and of the board and shall have general charge and supervision of the books and records of the association. He shall sign all membership<sup>29</sup> certificates with the president and such other papers pertaining

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<sup>29</sup>*If the association is formed with capital stock, this word should be changed to "stock".*

to the association as he may be authorized or directed to sign by the board. He shall serve all notices required by law and by these bylaws and shall make a full report of all matters and business pertaining to his office to the members at the annual meeting. He shall keep the corporate seal and affix it to all papers requiring a seal. He shall keep complete membership<sup>30</sup> records. He shall make all reports required by law and shall perform such other duties as may be required of him by the association or the board.

SECTION 4. *Duties of Treasurer.* The treasurer shall perform such duties with respect to the finances of the association as may be prescribed by the board.

SECTION 5. *Duties of Manager.* The manager shall perform such duties and shall exercise such authority as the board may from time to time vest in him. Under the general supervision of the board, the manager shall have general charge of the ordinary and usual business operations of the association including the purchasing, marketing, and handling of all products and supplies handled by the association. He shall render annual and other statements in the form and in the manner prescribed by the board. He shall employ, supervise, and dismiss any and all employees of the association.

## **ARTICLE VI—EXECUTIVE COMMITTEE AND OTHER COMMITTEES**

SECTION 1. *Powers and Duties.* The board may, in its discretion, appoint from its own membership an executive committee of \_\_\_\_\_ ( ) members, determining their tenure of office and their power and duties. The board may allot to such executive committee all or any stated portion of the functions and powers of the board, subject to the general direction, approval, and control of the board. Copies of the minutes of

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<sup>30</sup>If the association is formed with capital stock, this word should be changed to "stock ownership".



any meeting of the executive committee shall be mailed to all directors within seven (7) days following such meeting.

SECTION 2. *Other Committees.* The board may, in its discretion appoint such other committees as may be necessary.

## **ARTICLE VII—MEMBERSHIP CERTIFICATES**

The board shall cause to be issued appropriate certificates of membership.

If the association is organized with capital stock, this Article might read as follows:

### **ARTICLE VII—STOCK CERTIFICATES**

SECTION 1. *Common Stock.* Each certificate of common stock shall show on its face its designation by class and the privileges, voting rights, or restrictions and qualifications applicable to shares of such class as specified in the articles of incorporation.

SECTION 2. *Preferred Stock.* Each certificate of preferred stock shall show on its face the preferences, privileges, voting rights, or restrictions and qualifications of such stock as specified in the articles of incorporation.

Article VIII is suitable for an association organized on a stock or non-stock basis serving members only. If the association serves nonmembers and it is intended that members and nonmembers be treated alike in patronage distributions, insert at the places marked by an asterisk (\*) the following: “, members and nonmembers alike,”. If, however, nonmembers are not to be treated like members in patronage distributions, provisions accommodating the desired treatment should be added.

## ARTICLE VIII—OPERATION AT COST AND PATRONS' CAPITAL

SECTION 1. *Operation at Cost.* The association shall at all times be operated on a cooperative service-at-cost basis for the mutual benefit of its patrons. No interest or dividends shall be paid by the association on any capital furnished by its patrons.<sup>31</sup>

SECTION 2. *Refunds and Patrons' Capital.* In furnishing service, such as marketing products, providing supplies and equipment, or otherwise making facilities or services available to patrons, the association's operations shall be so conducted that all patrons\* will through their patronage furnish capital for the association. To assure that the association will operate on a service-at-cost basis the association is obligated to account on a patronage basis to all its patrons\* for all amounts received from the furnishing of these services in excess of operating costs and expenses properly chargeable against the type of service furnished. All such amounts in excess of operating costs and expenses at the moment they are furnished by the patrons are received by the association with the understanding that they are provided as capital.

The association is obligated to make payments of all such amounts in excess of operating costs and expenses in cash refunds or by credits to a capital account for each patron.<sup>32</sup> The books and records of the association shall be set up and kept in such a manner that at the end of each fiscal year the amount

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<sup>31</sup>This sentence must be co-ordinated with whatever provision is made for the payment of dividends in the articles of incorporation. See note 14 *supra*. If dividends on common or preferred stock or other capital are authorized, a provision should be included here for their payment.

<sup>32</sup>Such amounts are sometimes referred to as patronage refunds, patronage dividends, final pool settlements, net margins, net savings, capital credits or the like.

Associations that acquire capital by the per-unit capital retain method may want to add at this point the following sentence: "Each patron also agrees to provide capital in such amounts as determined by the board based on physical units handled or a percent of gross resale price of products marketed or purchased through the association." In this connection, see also Neely and Volkin, *Tax Laws Changed on Capital Retains, News for Farmer Cooperatives* (Reprint No. 328 March 1967), published by Farmer Cooperative Service, U.S. Dept. Agr.

of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron.<sup>33</sup> The association shall within 8½ months after the close of the fiscal year notify each patron, in the form of a written notice of allocation (as defined in 26 U.S.C. 1388), of the amount of capital so credited to his account.

All other amounts, such as interest or amounts from nonpatronage sources, received by the association from its operations in excess of costs and expenses shall, insofar as permitted by law and to the extent practicable, be allocated to its patrons on a patronage basis and any amount so allocated shall be included as a part of the capital credited to the accounts of patrons as herein provided.

An operating loss shall be apportioned among the patrons during the year of loss so that such loss will, to the extent practicable, be borne by the patrons of the loss year on an equitable basis. If in any fiscal year the association shall incur a loss other than an operating loss, the board shall have full authority to prescribe the basis on which capital furnished by patrons may be reduced or such loss otherwise equitably apportioned among the patrons.

SECTION 3. *Revolving Capital.* If, at any time, the board shall determine that the financial condition of the association will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirement of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the association being first retired.

Notwithstanding any other provision of these bylaws, the board, at its discretion, shall have the power to retire any capital credited to patrons' accounts on such terms and conditions as may be agreed upon by the parties in any instance in which

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<sup>33</sup>If the association is authorized to serve nonmembers, the following sentence may be added at this point: "If a nonmember patron is eligible for membership, amounts credited to his capital account may be applied on the payment of his membership fee (or share of membership stock if a capital stock association)."



the interests of the association and its patrons are deemed to be furthered thereby and funds are determined by the board to be available for such purposes.

SECTION 4. *Transfer*. No assignment or transfer of any amount credited to the capital account of a patron shall be binding on this association without the consent of the board nor until it shall have been entered in the books of this association.

SECTION 5. *Consent*. Each person who hereafter applies for and is accepted to membership in this association and each member of this association on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to his patronage occurring after \_\_\_\_\_, which are made in written notices of allocation (as defined in 26 U.S.C. 1388), and which are received by him from the association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. 1385(a) in the taxable year in which such written notices of allocation are received by him.

SECTION 6. *Consent Notification to Members and Prospective Members*.<sup>34</sup> Written notification of the adoption of this Article, a statement of its significance and a copy of the provision shall be given separately to each member and prospective member before he becomes a member of the association.

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<sup>34</sup>Under Subchapter T of the Internal Revenue Code of 1954, as amended, a cooperative may not deduct or exclude from its gross income "noncash" patronage allocations to members unless the members consent to include the face amount of those allocations in their income. A simple method of obtaining members' consents is through a bylaw provision similar to Section 5 and notification to members and prospective members of its adoption and its significance as provided in Section 6.

An appropriate notification could be a letter to the members and prospective members quoting the bylaw and stating that certain patronage allocations to the members must be treated by them as income and that when such allocations are made they will be accompanied by a notice to that effect.

Associations that do not wish to obtain members' consents through a bylaw provision may delete Sections 5 and 6.

## **ARTICLE IX—DISSOLUTION AND PROPERTY INTEREST OF MEMBERS**

Upon dissolution, after all debts and liabilities of the association shall have been paid, and all capital furnished through patronage shall have been retired without priority on a pro rata basis, the remaining property and assets of the association shall be distributed among the members and former members in the proportion which the aggregate patronage of each member bears to the total patronage of all such members, unless otherwise provided by law.<sup>35</sup>

If the association is formed with capital stock, this Article may be changed to read as follows:

### **ARTICLE IX—DISSOLUTION AND PROPERTY INTEREST OF MEMBERS**

Upon dissolution, after (1) all debts and liabilities of the association shall have been paid, (2) the par value of stockholders' shares returned, and (3) all capital furnished through patronage shall have been retired without priority on a pro rata basis, the remaining property and assets of the association shall be distributed among the members and former members in the proportion which the aggregate patronage of each member bears to the total patronage of all such members, unless otherwise provided by law.<sup>35</sup>

## **ARTICLE X—UNCLAIMED MONEY**

A claim for money against the association shall be subject to the provisions of this Article whenever the association is ready,

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<sup>35</sup>*Whether this or some other priority of payment should be prescribed will depend primarily (1) upon the requirements of applicable State law, and (2) the intended plan of operation.*

able, and willing to pay such claim, and has paid or is paying generally claims arising under similar circumstances, but payment of such claim cannot be made for the reason that the association does not know the whereabouts or mail address of the one to whom it is payable or the one entitled to payment.

If such claim be not actually paid within a period of \_\_\_\_ years<sup>36</sup> after it became payable as herein provided, the association shall remove the claim as a liability on its books; provided that no such removal shall be made unless at least 30 days prior thereto the association shall have sent by registered United States post, with the return receipt requested, a written notice of the proposed removal, addressed to the person appearing from the association's records to be entitled to payment of such money at the last address of such person shown by the records of the association.

If any such claim be removed of record after giving such notice, the claim shall be deemed extinguished but the association shall continue to maintain a memorandum record of such claim and shall pay the principal amount thereof without interest to any claimant who subsequently establishes to the satisfaction of the association his right to receive payment.

Any and all amounts recovered by the association pursuant to this Article, after deducting therefrom the amount of any taxes payable thereon, shall be placed in a special account. Any claim paid after the expiration of the period of years herein specified shall be deducted from such account.

## ARTICLE XI—FISCAL YEAR

The fiscal year of the association shall begin on the first day of January of each year and shall end on the thirty-first day of December of the same year.

If other than the calendar year is selected, this Article might read:

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<sup>36</sup>*Insert here a period of time equal to the applicable statute of limitations with respect to claims of this class.*

The fiscal year of the association shall commence of the first day of \_\_\_\_\_ each year and shall end on the last day of \_\_\_\_\_ of the following year.

## ARTICLE XII—MISCELLANEOUS PROVISIONS

SECTION 1. *Waiver of Notice.* Any member or board member may waive in writing any notice of a meeting required to be given by these bylaws. The attendance of a member or board member at any meeting shall constitute a waiver of notice of such meeting by such member or board member, except in case a member or board member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

SECTION 2. *Bylaws Printed.* After adoption, these bylaws, preceded by the articles of incorporation, shall be printed in pamphlet form and a copy thereof shall be delivered to each member and to each person who later becomes a member of the association as shown on the books of record.

SECTION 3. *Seal.* The corporate seal of this association shall have inscribed on it the name of the association, \_\_\_\_\_, and the year of incorporation.

## ARTICLE XIII—AMENDMENTS

If notice of the character of the amendment proposed has been given in the notice of meeting, these bylaws may be altered or amended at any regular or special meeting of the members by the affirmative vote of a majority of the members present or voting by mail.

We, the undersigned, being all of the incorporators and members of the \_\_\_\_\_ association, do hereby assent to the foregoing bylaws and do adopt the same as the bylaws of said association; and in witness whereof, we have

hereunto subscribed our names, this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Waiver of Notice of First Meeting of Members**

We, the undersigned, being all of the incorporators of \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_,  
(Name of association) (Town) (State)  
constituting all of the present members of such association,  
hereby waive notice of a meeting of the members and consent  
to the holding of a meeting of such members at \_\_\_\_\_  
o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_, at \_\_\_\_\_ in \_\_\_\_\_,  
(Place of meeting) (Town)  
\_\_\_\_\_ for the purpose of adopting bylaws for the  
(State)  
government of the association and transacting any other busi-  
ness that may properly come before the meeting.  
Witness our signatures, this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Waiver of Notice of First Meeting of  
Board of Directors**

We, the undersigned, being all the directors of \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, hereby  
(Name of association) (Town) (State)  
waive notice of a meeting of such directors at \_\_\_\_\_ o'clock  
\_\_\_\_\_M. on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_,  
(Day)



at \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ for  
(Place of meeting) (Town) (State)  
the purpose of electing officers of the association to serve during  
the ensuing year, adopting the form of marketing contract, and  
transacting any other business that may properly come before  
said meeting.

Witness our signatures, this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

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## Minutes of First Meeting of Members

The first meeting of the members of \_\_\_\_\_ was  
(Name of association)  
held at \_\_\_\_\_ o'clock \_\_\_\_ M. on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, in \_\_\_\_\_,  
(Place of meeting) (Town)  
\_\_\_\_\_. The chair called for proof of notice of the  
(State)

meeting, whereupon \_\_\_\_\_ presented a waiver  
of notice and consent to hold the meeting signed by all of the  
members of the association, which waiver and consent was in  
the following form:

*(Insert copy of waiver of notice and consent to meeting).*

The chair ruled that the meeting was properly called and  
it was ascertained that all the members of the association  
were present. The chair reported that the articles of incorpo-  
ration of the association were filed on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_  
noon, in the office of the Secretary of State of the State of  
\_\_\_\_\_, and presented a copy of said articles of in-  
corporation, which was read, and on motion duly made, sec-  
onded and carried, was directed to be entered in full in the  
minute book. (See page \_\_\_\_.) A draft of proposed bylaws



for the government of the association was presented by \_\_\_\_\_ and was read to the meeting and discussed section by section and as a whole, and the proposed bylaws were unanimously adopted. Each member affixed his signature to the bylaws and the secretary was instructed to spread the bylaws on the minutes of this meeting.

*(Here insert record of any other business that may have been transacted.)*

There being no further business to come before the meeting, on motion duly made, seconded, and unanimously adopted, the meeting was adjourned.

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(Temporary Chairman)

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(Temporary Secretary)

## Minutes of First Meeting of Board of Directors

of

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(Name of association)

The first meeting of the board of directors of the \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, was held at  
(Name of association) (Town) (State)  
\_\_\_\_\_ o'clock \_\_\_\_\_ M., on \_\_\_\_\_, 19\_\_\_\_,  
at \_\_\_\_\_, in \_\_\_\_\_.  
(Place of meeting) (Town) (State)

Upon convening, \_\_\_\_\_ was elected temporary chairman and \_\_\_\_\_ temporary secretary of the meeting, and each assumed his office.

The chair called for proof of notice of the meeting, whereupon \_\_\_\_\_ presented a waiver of notice and consent to hold the meeting, signed by all the directors of the association, which waiver and consent was written as follows:

*(Insert copy of waiver of notice and consent to holding meeting.)*

Upon roll call of the directors of the association, the following answered present:

*(Record the names of all directors present.)*

The chair ruled that proper and legal notice of the meeting had been given and that a quorum was present, and announced that the meeting was open for transacting business.

The chair stated that the meeting was called for the purpose of electing officers<sup>37</sup> of the association for the ensuing year and transacting any other business that might properly come before the meeting.

Upon motion duly made and seconded,<sup>37</sup> the following officers were unanimously elected to serve at the discretion of the board until the time of the first regular meeting of the board to be held as soon as practicable following the first annual meeting of members.

*(Record the names of the officers elected and the title of office.)*

Following the election of the officers,<sup>37</sup> the president took the chair, and the secretary assumed the duties as secretary of the meeting.

Upon motion duly made, seconded, and carried, the following were appointed members of the executive committee, as provided in the bylaws.

*(Record the names.)*

Upon motion duly made and seconded, the following resolution was adopted:

Resolved, that the executive committee be charged with the following specific powers and duties:

*(State here the specific powers and duties which it is desired to delegate during the period when the directors are not in session, subject to the general direction of the board.)*

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the president and secretary be, and they are hereby, authorized to issue certificates of membership<sup>38</sup> in the form as submitted to this meeting, and each in form as follows:

*(Here insert form. A suggested form appears on page 43.)*

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<sup>37</sup>Omit if the officers are named in the articles of incorporation.

<sup>38</sup>If the association is formed with capital stock, the resolution should be changed to authorize the issuance of certificates of stock, and the forms of the certificates should be inserted in the resolution.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the president and secretary be, and they are hereby, authorized to have printed a sufficient number of copies of the articles of incorporation and bylaws, so that a copy thereof may be delivered to each member and each person who may later become a member of the association.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the marketing contract, in form as submitted to this meeting, copy of which appears hereafter, is hereby approved:

*(Here insert form of marketing contract.)*

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that all subscriptions for member capital of the association and marketing contracts with the association, appearing on the list submitted by the secretary, be accepted, and that the president and the secretary be, and they hereby are, directed to carry out the terms and conditions thereof, and to execute all marketing contracts for and on behalf of the association.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the \_\_\_\_\_ Bank be selected as a depository for the funds of the association.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that all checks drawn upon the \_\_\_\_\_ Bank, for withdrawal of funds of the association on deposit therewith, be signed by the treasurer and countersigned by either the president or vice president.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the treasurer is hereby authorized to receive all funds paid into the association, endorse all checks and other media of exchange, and deposit the same to the account of the association in \_\_\_\_\_ Bank.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the executive committee be, and is hereby authorized to determine the amount of the bond or bonds which the bylaws specify shall be required of all officers, agents, and employees charged by the association with responsibility for the custody of any of its funds or property, and to see that the bonds, as required, are executed and presented for the approval of the board of directors.

*(Similar resolutions should be adopted, providing for the insurance of the property of the association and for adequate insurance covering other contingencies. Any additional business transacted by the board should also be recorded here.)*

There being no further business to come before the meeting, on motion duly made, seconded, and unanimously adopted, the meeting adjourned.

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Chairman.

## Membership Application

I hereby apply for membership in \_\_\_\_\_ and agree to abide by the articles of incorporation and bylaws of said association, now or hereafter in effect, copies of which have been presented to me for my inspection. After my membership shall have been in effect one year from the date of its acceptance by the association, either party hereto may terminate it in any year on the last day of the anniversary month in which this agreement was so accepted by notifying the other party in writing of this intention, such notice to be given between the first and fifteenth of the month immediately prior to the effective date of termination. If neither of the parties hereto so notifies the other, it is hereby mutually agreed that this shall constitute conclusive evidence that the parties hereto have renewed this agreement for another year.

Date \_\_\_\_\_, 19\_\_\_\_.

Producer's signature \_\_\_\_\_ ( \_\_\_\_\_ )  
(Print name here)

Address \_\_\_\_\_

(R.F.D. or Street No.) (Town) (State and Zip Code)

Social Security No. \_\_\_\_\_ County \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Inc.

By \_\_\_\_\_, Pres.

By \_\_\_\_\_, Secy.

## Membership Certificate

No. \_\_\_\_\_

This certifies that \_\_\_\_\_ of \_\_\_\_\_, is a member of \_\_\_\_\_ Association and is entitled to all of the rights, benefits, and privileges of the Association.

Dated \_\_\_\_\_

\_\_\_\_\_  
(President)

\_\_\_\_\_  
(Secretary)

## The Capper-Volstead Act

### An act to authorize association of producers of agricultural products

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members*



thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

SEC. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the



records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

Approved, February 18, 1922, (42 Stat. 388.) 7 U.S.C. 291-292.

## **Other Publications Available**

More detailed information on particular steps in the cooperative-forming process is contained in other publications of the Farmer Cooperative Service listed below. Single copies of these publications may be obtained by writing the Farmer Cooperative Service, U. S. Department of Agriculture, Washington, D. C. 20250.

**Managing Farmer Cooperatives—Educational Circular 17.**

**Improving Management of Farmer Cooperatives—General Report 120.**

**How the Adjustable Revolving Fund Capital Plan Works—General Report 111.**

**“Mr. Chairman—” —Information 6.**

**What are Patronage Refunds?—Information 34.**

**Financial Structure of Farmer Cooperatives—Research Report No. 10.**

**Handling Net Margins Under the New Tax Law—Information 39.**

**Assuring Democratic Election of Cooperative Directors—Educational Circular 21.**

**Providing Equitable Treatment for Large and Small Members—Information 21.**